IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

RP.No. 194 of 2005 IN

C.R.P.NO. 215 OF 1993

TLB.201/1976 OF TALUK LAND BOARD, TALIPARAMBA.

PETITIONER : PETITIONER:

K.C. EAPEN, KARUNTHOTTICAL,
P.O. MEDICAL COLLEGE, TRIVANDRUM.

BY ADV. SRI.PHILIP T.VARGHESE

RESPONDENTS: RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE
   CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE TALUK LAND BOARD, TALIPARAMBA.

3. THE TAHSILDAR, RANNI.

4. STEPHEN, S/O. MATHAI,
   KARIKUNNAM. P.O., THODUPUZHA.

GOVERNMENT PLEADER SRI. DILEEP

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

R.P. NO. 194 OF 2005
in
C.R.P. NO. 215 OF 1993

Dated this the 19th December, 2007

O R D E R

Petitioner in C.R.P.No.215 of 1993 is the review petitioner. The Revision was disposed of by the order dated 12.4.2002. The Revision was filed challenging the order dated 26.12.1992, passed by the Taluk Land Board, Taliparamba. The learned single Judge dismissed the Revision Petition holding that no grounds are made out to interfere with the order impugned in the Revision.

2. The review petitioner/revision petitioner is the declarant in TLB201/76/TBA. It was found by the Taluk Land Board that he was holding excess land. He was directed to surrender an extent of 21.42 acres as per the order dated 29.6.1985. Against that order, the declarant filed C.R.P.No.1670 of 1985. That Revision was dismissed on 19.10.1987. Thereafter, certain claim petitions were filed and the Taluk Land Board disposed of those claim petitions as per order dated 26.12.1992. In that process, the Taluk Land Board found that there is a shortage of 7.21 acres and that shortage was deducted from the extent of land to be surrendered by the declarant. Accordingly, instead of 21.42 acres, the declarant was held liable to surrender only 14.21 acres. The

legality of such deduction was not under challenge in the Revision. Therefore, I am not expressing any opinion on the reduction of the extent made by the Taluk Land Board in the order dated 26.12.1992.

3. As per the order dated 26.12.1992, the Taluk Land Board took note of the fact that the declarant has surrendered an extent of 1.80 acres and that the balance to be surrendered is an extent of 12.41 acres. The declarant was directed to surrender the said extent in the following manner:

Taluk	**Village**	**H.S.NO.**	**Extent**	**Classification**
Taliparamba	Kuttoor	119/1A1I	3.75.000	O.D.
Pathanamthitta	Chothakkal	776/1-2-4	8.66.000	O.D.
			12.41.000	

4. In the Civil Revision Petition, the revision petitioner contended that instead of taking 8.66 acres from Sy.No.776/1-2-4 of Chothakkal village in Pathanamthitta Taluk, it should have been taken from Sy.No.119/1A1I of Kuttoor Village in Taliparamba Taluk. The declarant contended that he could validly surrender the extent of 8.66 acres from the property at Kuttoor. It has come out that there was an agreement to sell an extent of 8.85 acres in Sy.No.119/1A1I of Kuttoor Village in favour of the fourth respondent Stephen. The agreement was entered into by

the declarant and his wife as sellers and the fourth respondent as the buyer. The possession of the property was given to the buyer. It is stated in the agreement that ceiling proceedings were pending before the Taluk Land Board and that the assignment deed was not being executed on account of that reason. The further stipulation in the agreement is that in case the Taluk Land Board decides that the excess land need not be taken from the land covered by the agreement, the sellers would execute an assignment deed in favour of the fourth respondent after receiving the balance consideration of Rs.30,975/- with interest at 12% per annum. It is also stipulated that if a portion of the land, in respect of which the agreement is executed is to be taken as excess land, the balance extent shall be assigned to the fourth respondent at the rate of Rs.7,250/- per acre.

5. The contention of the revision petitioner is that the agreement does not confer any title on the fourth respondent and that the declarant is entitled to surrender the extent covered by the agreement. The fourth respondent, on the other hand, would submit that he was put in possession of the property as per the terms of the agreement and that he continues to be in possession. The fourth respondent also states that the petitioner/declarant is not entitled to exercise the option in respect of the land covered by the agreement.

6. Section 85(6) of the Kerala Land Reforms Act provides that in determining the identity of the land, the Taluk Land Board shall accept the choice indicated under sub-section (2) or sub-section (3A). The proviso to Section 85(6) states that the Taluk Land Board shall not be bound to accept such choice if, (A) it has reason to believe that the person whose land is indicated to be surrendered has no good title to that land; or (B) the land indicated to be surrendered is not accessible; or (C) it considers for any other reason to be recorded in writing that it is not practicable to accept the choice or to take possession of the land. The declarant having entered into an agreement for sale with the fourth respondent and he having parted with the possession of the land, the declarant does not have any right to say that the said land should be taken possession of. The Taluk Land Board is not bound to accept that option. Learned counsel for the revision petitioner submits that the property available at Pathanamthitta has already been sold by registered assignment deed and, therefore, it would not be possible to take possession of that extent of land as now ordered by the Taluk Land Board. That is not a ground to contend that the option in respect of a land, possession of which has already been parted with the declarant, should be taken possession of. The Taluk Land Board is entitled to reject the option in case it is found that a third party has a claim over a particular land. Therefore, the

dismissal of the Civil Revision Petition was perfectly justified. No grounds are made out to review the order dated 12.4.2002.

Accordingly, the Review Petition is dismissed. No order as to costs.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

R.P.NO. 194 OF 2005 IN
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O R D E R

19th December, 2007